

**General Docket
United States Court of Appeals for the Ninth Circuit**

Court of Appeals Docket #: 16-16960

Docketed: 10/27/2016
Termed: 07/10/2019

Nature of Suit: 2895 Freedom of Information Act of 1974

Civil Beat Law Center v. Centers for Disease Control

Appeal From: U.S. District Court for Hawaii, Honolulu

Fee Status: Paid

Case Type Information:

- 1)** civil
- 2)** united states
- 3)** null

Originating Court Information:

District: 0975-1 : [1:16-cv-00008-JMS-KSC](#)

Court Reporter: Cynthia Fazio

Trial Judge: J. Michael Seabright, Chief District Judge

Date Filed: 01/07/2016

Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
08/30/2016	08/30/2016	10/26/2016	10/26/2016

Prior Cases:

None

Current Cases:

None

CIVIL BEAT LAW CENTER FOR THE PUBLIC INTEREST,
INC. Plaintiff - Appellant, R. Brian Black
Direct: 808-531-4000
[COR NTC Retained]
Civil Beat Law Center for the Public Interest
700 Bishop Street
Suite 1701

v.

CENTERS FOR DISEASE CONTROL & PREVENTION
Defendant - Appellee,

Rachel Shimazu Moriyama, Assistant U.S. Attorney
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CIVIL BEAT LAW CENTER FOR THE PUBLIC INTEREST, INC.,

Plaintiff - Appellant,

v.

CENTERS FOR DISEASE CONTROL & PREVENTION,

Defendant - Appellee.

10/27/2 016	<u>1</u> 16 pg, 1.5 MB	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 11/03/2016. Transcript ordered by 11/25/2016. Transcript due 12/27/2016. Appellant Civil Beat Law Center for the Public Interest, Inc. opening brief due 02/03/2017. Appellee Centers for Disease Control & Prevention answering brief due 03/06/2017. Appellant's optional reply brief is due 14 days after service of the answering brief. [10175776] (IV) [Entered: 10/27/2016 09:48 AM]
10/28/2 016	<u>2</u> 3 pg, 4.04 MB	Filed (ECF) Appellant Civil Beat Law Center for the Public Interest, Inc. Mediation Questionnaire. Date of service: 10/28/2016. [10177892] [16-16960] (Black, R. Brian) [Entered: 10/28/2016 11:32 AM]
11/02/2 016	<u>3</u> 2 pg, 201.64 KB	Filed Mediation order: This case is under consideration for inclusion in the Mediation Program. By 11/16/2016 , counsel for all parties intending to file briefs in this matter are requested to inform the Circuit Mediator by email of their clients' views on whether the issues on appeal or the underlying dispute might be amenable to settlement presently or in the foreseeable future. This communication will be kept confidential, if requested... This communication should not be filed with the court... The existing briefing schedule remains in effect... [10183117] (VS) [Entered: 11/02/2016 10:56 AM]
11/15/2 016	<u>4</u> 5 pg, 311.48 KB	MEDIATION CONFERENCE SCHEDULED - Assessment Conference, 12/19/2016, 2:00 p.m. PACIFIC Time. The briefing schedule previously set by the court remains in effect. See order for instructions and details. [10197857] (VS) [Entered: 11/15/2016 02:40 PM]
11/30/2 016	<u>5</u> 2 pg, 78.47 KB	Filed (ECF) notice of appearance of Robert D. Kamenshine for Appellee Centers for Disease Control & Prevention. Date of service: 11/30/2016. [10214831] [16-16960] (Kamenshine, Robert) [Entered: 11/30/2016 08:17 AM]
11/30/2 016	6	Added attorney Robert David Kamenshine for Centers for Disease Control & Prevention, in case 16-16960. [10216318] (JFF) [Entered: 11/30/2016 04:17 PM]
12/14/2 016	<u>7</u> 1 pg, 190.64 KB	MEDIATION CONFERENCE RESCHEDULED - Assessment Conference, 12/21/2016, 10:30 a.m. Pacific Time. (originally scheduled on 12/19/2016). [10233738] (VS) [Entered: 12/14/2016 03:24 PM]
12/21/2 016	<u>8</u> 1 pg, 189.87 KB	MEDIATION CONFERENCE RESCHEDULED - Assessment Conference, 01/09/2017, 11:30 a.m. Pacific Time. (originally scheduled on 12/21/2016). [10241718] (VS) [Entered: 12/21/2016 11:21 AM]
01/09/2 017	<u>9</u> 1 pg, 189.54 KB	MEDIATION CONFERENCE RESCHEDULED - Assessment Conference, 01/23/2017 Pacific Time. (originally scheduled on 01/09/2017). [10258960] (MS) [Entered: 01/09/2017 11:36 AM]
01/23/2 017	<u>10</u> 1 pg, 185.11 KB	Filed Mediation order: This case is not selected for inclusion in the Mediation Program. All further inquiries regarding this appeal, including requests for extensions of time, should be directed to the Clerk's office. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant further settlement discussions. [10275325] (VS) [Entered: 01/23/2017 11:43 AM]
02/03/2 017	<u>11</u> 78 pg, 535.18 KB	Submitted (ECF) Opening Brief for review. Submitted by Appellant Civil Beat Law Center for the Public Interest, Inc.. Date of service: 02/03/2017. [10301389] [16-16960]--[COURT UPDATE: Attached corrected brief. 02/07/2017 by SLM] (Black, R. Brian) [Entered: 02/03/2017 12:19 PM]

- 02/03/2017 [12](#)
250 pg, 14.91 MB Submitted (ECF) excerpts of record. Submitted by Appellant Civil Beat Law Center for the Public Interest, Inc.. Date of service: 02/03/2017. [10301490] [16-16960] (Black, R. Brian) [Entered: 02/03/2017 12:23 PM]
- 02/07/2017 [13](#)
2 pg, 188.04 KB Filed clerk order: The opening brief [\[11\]](#) submitted by Civil Beat Law Center for the Public Interest, Inc. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record [\[12\]](#) submitted by Civil Beat Law Center for the Public Interest, Inc.. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10305501] (SML) [Entered: 02/07/2017 11:51 AM]
- 02/13/2017 14 Filed 4 paper copies of excerpts of record [\[12\]](#) in 1 volume(s) filed by Appellant Civil Beat Law Center for the Public Interest, Inc.. [10317295] (SML) [Entered: 02/13/2017 01:13 PM]
- 02/13/2017 15 Received 7 paper copies of Opening Brief [\[11\]](#) filed by Civil Beat Law Center for the Public Interest, Inc.. [10317420] (RG) [Entered: 02/13/2017 02:02 PM]
- 02/27/2017 16 Filed (ECF) Streamlined request for extension of time to file Answering Brief by Appellee Centers for Disease Control & Prevention. New requested due date is 04/05/2017. [10334512] [16-16960] (Kamenshine, Robert) [Entered: 02/27/2017 01:34 PM]
- 02/27/2017 17 **Streamlined request [16] by Appellee Centers for Disease Control & Prevention to extend time to file the brief is approved. Amended briefing schedule: Appellee Centers for Disease Control & Prevention answering brief due 04/05/2017. The optional reply brief is due 14 days from the date of service of the answering brief.** [10334529] (Witt, Dusty) [Entered: 02/27/2017 01:39 PM]
- 04/05/2017 [18](#)
98 pg, 596.5 KB Submitted (ECF) Answering Brief for review. Submitted by Appellee Centers for Disease Control & Prevention. Date of service: 04/05/2017. [10385181] [16-16960] (Kamenshine, Robert) [Entered: 04/05/2017 03:26 PM]
- 04/06/2017 [19](#)
2 pg, 187.55 KB Filed clerk order: The answering brief [\[18\]](#) submitted by Centers for Disease Control & Prevention is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10386036] (SML) [Entered: 04/06/2017 10:27 AM]
- 04/10/2017 20 Received 7 paper copies of Answering Brief [\[18\]](#) filed by Centers for Disease Control & Prevention. [10389968] (DB) [Entered: 04/10/2017 12:14 PM]
- 04/17/2017 [21](#)
5 pg, 130.16 KB Filed (ECF) Appellant Civil Beat Law Center for the Public Interest, Inc. Motion to strike portion of Addendum to Brief for Appellee. Date of service: 04/17/2017. [10398865] [16-16960] (Black, R. Brian) [Entered: 04/17/2017 02:45 PM]
- 04/19/2017 [22](#)
31 pg, 337.9 KB Submitted (ECF) Reply Brief for review. Submitted by Appellant Civil Beat Law Center for the Public Interest, Inc.. Date of service: 04/19/2017. [10403559] [16-16960] (Black, R. Brian) [Entered: 04/19/2017 06:06 PM]
- 04/20/2017 [23](#) Filed clerk order: The reply brief [\[22\]](#) submitted by Civil Beat Law Center for the Public Interest, Inc. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of

017	2 pg, 187.58 KB	the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10405101] (SML) [Entered: 04/20/2017 04:10 PM]
04/21/2 017	<u>24</u> 1 pg, 37.79 KB	Filed clerk order (Deputy Clerk: AMT):Appellantâ€™s motion (Docket Entry No. [21]) to strike portion of addendum to answering brief and any related filing is referred for disposition to the panel that will consider the merits of the case for resolution . [10405863] (OC) [Entered: 04/21/2017 10:34 AM]
04/26/2 017	<u>25</u> 5 pg, 37.45 KB	Filed (ECF) Appellee Centers for Disease Control & Prevention response opposing motion ([24] Clerk Order). Date of service: 04/26/2017. [10411992] [16-16960] (Kamenshine, Robert) [Entered: 04/26/2017 12:57 PM]
04/28/2 017	26	Received 7 paper copies of Reply Brief [22] filed by Civil Beat Law Center for the Public Interest, Inc.. [10415219] (DB) [Entered: 04/28/2017 12:50 PM]
05/02/2 017	<u>27</u> 6 pg, 136.1 KB	Filed (ECF) Appellant Civil Beat Law Center for the Public Interest, Inc. reply to response (motion to strike portion or whole of document). Date of service: 05/02/2017. [10418787] [16-16960] (Black, R. Brian) [Entered: 05/02/2017 12:14 PM]
05/02/2 017	<u>28</u> 4 pg, 42.33 KB	Filed (ECF) Appellee Centers for Disease Control & Prevention Correspondence: Notice Of Disclosures And Suggestion Of Partial Mootness. Date of service: 05/02/2017 [10418915] [16-16960]--[COURT UPDATE: Attached corrected notice. 05/03/2017 by SLM] (Kamenshine, Robert) [Entered: 05/02/2017 12:59 PM]
05/05/2 017	<u>29</u> 1 pg, 194.11 KB	Filed clerk order (Deputy Clerk: HMB): Appelleeâ€™s â€œnotice of agency disclosures and suggestion of partial mootnessâ€ (Docket Entry No. [28]) and any related filing is referred for disposition to the panel assigned to decide the merits of this appeal. Briefing is completed. [10424448] (OC) [Entered: 05/05/2017 04:05 PM]
05/08/2 017	<u>30</u> 7 pg, 149.49 KB	Filed (ECF) Appellant Civil Beat Law Center for the Public Interest, Inc. Motion to file supplemental excerpts of record, Motion to file supplemental brief. Date of service: 05/08/2017. [10425629] [16-16960] (Black, R. Brian) [Entered: 05/08/2017 01:00 PM]
05/15/2 017	<u>31</u> 4 pg, 58.58 KB	Filed (ECF) Appellee Centers for Disease Control & Prevention response opposing motion ([30] Motion (ECF Filing), [30] Motion (ECF Filing) motion to file supplemental excerpts of record, [30] Motion (ECF Filing) motion to file supplemental brief). Date of service: 05/15/2017. [10433807] [16-16960] (Kamenshine, Robert) [Entered: 05/15/2017 10:18 AM]
05/17/2 017	<u>32</u> 6 pg, 132.12 KB	Filed (ECF) Appellant Civil Beat Law Center for the Public Interest, Inc. reply to response (motion to file supplemental excerpts of record, motion to file supplemental brief,). Date of service: 05/17/2017. [10438135] [16-16960] (Black, R. Brian) [Entered: 05/17/2017 12:19 PM]
07/20/2 017	<u>33</u> 2 pg, 80.28 KB	Filed (ECF) notice of appearance of Matthew M. Collette for Appellee Centers for Disease Control & Prevention. Date of service: 07/20/2017. [10516122] [16-16960] (Collette, Matthew) [Entered: 07/20/2017 02:39 PM]
07/20/2 017	34	Attorney Robert David Kamenshine in 16-16960 substituted by Attorney Matthew M. Collette in 16-16960 [10516218] (JFF) [Entered: 07/20/2017 03:14 PM]
03/06/2	<u>35</u>	Filed clerk order (Deputy Clerk: MBI): Appellant moves to file supplemental excerpts of record and for permission to file a supplemental brief of 5,000 words. This motion (Docket

018	1 pg, 196.43 KB	Entry No. [30]) is granted in part. Appellant may submit a supplemental filing of no more than 2,000 words addressing the issue of partial mootness. Appellant's supplemental filing is due 10 days from the date of this order. Appellee may file a response of no more than 1,500 words within 7 days after service of appellant's supplemental filing. Appellant may file a reply within 7 days after service of appellee's response, not to exceed 1,000 words. [10787381] (OC) [Entered: 03/06/2018 10:22 AM]
03/16/2 018	<u>36</u> 14 pg, 260.56 KB	Submitted (ECF) Supplemental Brief for review. Submitted by Appellant Civil Beat Law Center for the Public Interest, Inc.. Date of service: 03/16/2018. [10801473] [16-16960] (Black, R. Brian) [Entered: 03/16/2018 12:26 PM]
03/16/2 018	<u>37</u> 2 pg, 187.97 KB	Filed clerk order: The supplemental brief [36] submitted by Civil Beat Law Center for the Public Interest, Inc. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: tan. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10801595] (KWG) [Entered: 03/16/2018 01:10 PM]
03/20/2 018	38	Received 7 paper copies of Supplemental Brief [36] filed by Civil Beat Law Center for the Public Interest, Inc.. [10805419] (RG) [Entered: 03/20/2018 12:07 PM]
03/23/2 018	<u>39</u> 13 pg, 95.84 KB	Submitted (ECF) Supplemental Brief for review. Submitted by Appellee Centers for Disease Control & Prevention. Date of service: 03/23/2018. [10809740] [16-16960] (Collette, Matthew) [Entered: 03/23/2018 08:16 AM]
03/23/2 018	<u>40</u> 2 pg, 187.99 KB	Filed clerk order: The supplemental brief [39] submitted by Centers for Disease Control & Prevention is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: tan. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10809997] (KWG) [Entered: 03/23/2018 09:54 AM]
03/26/2 018	41	Received 7 paper copies of Supplemental Brief [39] filed by Centers for Disease Control & Prevention. [10812369] (DB) [Entered: 03/26/2018 12:36 PM]
03/30/2 018	<u>42</u> 11 pg, 243.07 KB	Submitted (ECF) Supplemental Brief for review. Submitted by Appellant Civil Beat Law Center for the Public Interest, Inc.. Date of service: 03/30/2018. [10819300] [16-16960] (Black, R. Brian) [Entered: 03/30/2018 12:32 PM]
03/30/2 018	<u>43</u> 2 pg, 187.97 KB	Filed clerk order: The supplemental brief [42] submitted by Civil Beat Law Center for the Public Interest, Inc. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: tan. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10819331] (KWG) [Entered: 03/30/2018 01:05 PM]
04/03/2 018	44	Received 7 paper copies of Supplemental Brief [42] filed by Civil Beat Law Center for the Public Interest, Inc.. [10822637] (RG) [Entered: 04/03/2018 12:51 PM]
04/17/2 018	<u>45</u> 1 pg, 194.55 KB	Filed clerk order (Deputy Clerk: MBI): The parties' supplemental briefs regarding the issue of partial mootness (Docket Entry Nos. [36], [39], [42]) are referred to the panel assigned to decide the merits of this appeal for whatever consideration the panel deems

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018

This case is being considered for an upcoming oral argument calendar in Honolulu.

Please review the Honolulu sitting dates for October 2018 at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please inform the court *within 3 days of this notice*, using CM/ECF (**Type of Document**: File Correspondence to Court; **Subject**: regarding availability for oral argument).

When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.

If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter *within 3 days of this notice*, using CM/ECF (**Type of Document**: File Correspondence to Court; **Subject**: request for mediation). [10910012] (KS) [Entered: 06/15/2018 07:57 AM]

06/18/2 [47](#)
018 1 pg, 256.26 KB

Filed (ECF) Appellant Civil Beat Law Center for the Public Interest, Inc. Correspondence: Regarding availability for oral argument. Date of service: 06/18/2018 [10912334] [16-16960] (Black, R. Brian) [Entered: 06/18/2018 12:39 PM]

07/05/2 [48](#)
018 2 pg, 109.07 KB

Filed (ECF) notice of appearance of Anne Murphy for Appellee Centers for Disease Control & Prevention. Date of service: 07/05/2018. [10932280] [16-16960] (Murphy, Anne) [Entered: 07/05/2018 01:49 PM]

07/05/2 49
018

Added attorney Anne Murphy for Centers for Disease Control & Prevention, in case 16-16960. [10932284] (JFF) [Entered: 07/05/2018 01:53 PM]

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018

Notice of Oral Argument on Tuesday, October 09, 2018 - 9:30 am - Hawaii Bkcy Courtroom 250L - Honolulu HI.

View the Oral Argument Calendar for your case [here](#).

Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to arrive (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

When you have reviewed the calendar, download the [ACKNOWLEDGMENT OF HEARING NOTICE form](#) and within 21 days of Tuesday, October 09, 2018, file the completed form via Appellate CM/ECF.

[10959307] (AW) [Entered: 07/30/2018 01:38 PM]

07/30/2 [51](#)
018 1 pg, 74.63 KB

Filed (ECF) Acknowledgment of hearing notice. Location: Other (Honolulu). Filed by Attorney Mr. R. Brian Black for Appellant Civil Beat Law Center for the Public Interest, Inc.. [10959631] [16-16960] (Black, R. Brian) [Entered: 07/30/2018 02:30 PM]

09/18/2 [52](#)
018 1 pg, 52.27 KB

Filed (ECF) Acknowledgment of hearing notice. Location: Other (Honolulu, HI). Filed by Attorney Anne Murphy for Appellee Centers for Disease Control & Prevention. [11015763] [16-16960] (Murphy, Anne) [Entered: 09/18/2018 01:43 PM]

10/04/2 [53](#)
018 2 pg, 25.68 KB

Filed (ECF) Appellee Centers for Disease Control & Prevention citation of supplemental authorities. Date of service: 10/04/2018. [11035024] [16-16960] (Murphy, Anne) [Entered: 10/04/2018 10:14 AM]

10/05/2 [54](#)

Filed order (KIM MCLANE WARDLAW, MARSHA S. BERZON and JOHNNIE B.

- 018 1 pg, 320.42 KB RAWLINSON) The appellantâ€™s motion to strike the addendum attached to the appelleeâ€™s brief (Docket No. [\[21\]](#)) is DENIED. The report contained in the addendum was cited and discussed before the district court and is therefore part of the record on appeal. See Fed. R. App. P. 10(a)(1); see also 9th Cir. R. 10-2. [11036354] (WL) [Entered: 10/05/2018 08:51 AM]
- 10/09/2 55
018 ARGUED AND SUBMITTED TO KIM MCLANE WARDLAW, MARSHA S. BERZON and JOHNNIE B. RAWLINSON. [11040068] (SME) [Entered: 10/09/2018 06:45 PM]
- 10/09/2 [56](#)
018 1 pg, 8.09 MB Filed Audio recording of oral argument.
Note: Video recordings of public argument calendars are available on the Court's website, at <http://www.ca9.uscourts.gov/media/> [11042832] (TG) [Entered: 10/11/2018 10:15 AM]
- 10/24/2 [57](#)
018 2 pg, 57.42 KB Filed (ECF) Appellee Centers for Disease Control & Prevention Correspondence: Notice of Withdrawal of Counsel Matthew M. Collette. Date of service: 10/24/2018 [11058896] [16-16960] (Collette, Matthew) [Entered: 10/24/2018 02:54 PM]
- 10/24/2 58
018 Terminated Matthew M. Collette for Centers for Disease Control & Prevention. [11058974] (RL) [Entered: 10/24/2018 03:12 PM]
- 02/22/2 59
019 Filed (ECF) notice of appearance of Marion Percell for Appellee Centers for Disease Control & Prevention. Date of service: 02/22/2019. (Party previously proceeding without counsel: No) [11204918] [16-16960] (Percell, Marion) [Entered: 02/22/2019 03:06 PM]
- 02/22/2 60
019 Added attorney Marion Percell for Centers for Disease Control & Prevention, in case 16-16960. [11205016] (QDL) [Entered: 02/22/2019 03:35 PM]
- 07/10/2 [61](#)
019 128 pg, 817.58 KB FILED OPINION (KIM MCLANE WARDLAW, MARSHA S. BERZON and JOHNNIE B. RAWLINSON) DISMISSED in part, VACATED in part, AFFIRMED in part, REVERSED in part, and REMANDED. Judge: MSB Authoring. FILED AND ENTERED JUDGMENT. [11358891] (AKM) [Entered: 07/10/2019 08:21 AM]
- 07/10/2 [62](#)
019 1 pg, 88.78 KB Filed clerk order (Deputy Clerk: AKM): At the direction of the Court, each party shall bear its own costs. [11358892] (AKM) [Entered: 07/10/2019 08:24 AM]

